

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 19 CR 2848 JB

v.

VICTOR KEARNEY,

Defendants.

**DEFENDANT VICTOR KEARNEY'S
SECOND ADDITIONAL PROPOSED JURY INSTRUCTIONS**

The Defendant Victor Kearney respectfully requests the Court include the following instructions to the jury and requests permission to submit such additional instructions as may become appropriate. These additional proposed jury instructions are supplemental to previously submitted proposed instructions and are not intended to as a withdrawal, waiver or abandonment of any previous proposed instructions submitted. Defendant renews and does not waive his prior objections and proposed instructions in connection with this Motion to Preserve Right to Jury Trial or otherwise previously filed in this matter.

12. Advice of counsel defense;

Respectfully submitted:

By: /s/ Paul Linnenburger
PAUL LINNENBURGER
Lane + Linnenburger + Lane LLP
P.O. Box 6622
Albuquerque, New Mexico 87197
(505) 226-7979
Email: paul@attorneyslane.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of March 2023, I filed this pleading electronically through the CM/ECF system, which caused the following counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Kimberly Brawley
Sean Sullivan
United States Attorney's Office
District of New Mexico
201 3rd Street NW, Suite 900
Albuquerque, New Mexico 87102

/s/ Paul Linnenburger

Paul Linnenburger

DEFENDANT’S PROPOSED INSTRUCTION NO. 12

To enter a guilty verdict as to the charges in the Indictment, you must find that Mr. Kearney acted willfully. Evidence has been presented as to Mr. Kearney’s reliance on counsel, Robert Fiser, and this is a factor you may consider when determining whether Mr. Kearney acted willfully.

You may find Mr. Kearney did not act willfully and is therefore not guilty if he requested advice of Robert Fiser as to a proposed action, disclosed all relevant facts to Mr. Fiser, received advice from Mr. Fiser that the action to be taken was legal, and Mr. Kearney relied in good faith on Mr. Fiser’s advice.

Source: *United States v. Wenger*, 427 F.3d 840 (10th Cir. 2005).